



Sen. James F. Clayborne, Jr.

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1 AMENDMENT TO SENATE BILL 1443

2 AMENDMENT NO. _____. Amend Senate Bill 1443 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Juvenile Court Act of 1987 is amended by
5 adding Part 5.5 to Article V as follows:

6 705 ILCS 405/Art. V Pt. 5.5 heading new

7 Part 5.5

8 JUVENILE FITNESS TO STAND TRIAL

9 (705 ILCS 405/5-5.5-101 new)

10 Sec. 5-5.5-101. Presumption of fitness; fitness standard.

11 A minor is presumed to be fit to stand trial or to plead, and be
12 sentenced. A minor is unfit if, because of his or her mental or
13 physical condition, he or she is unable to understand the
14 nature and purpose of the proceedings against him or her or to
15 assist in his or her defense. For purposes of this Act, "mental

1 condition" includes, but is not limited to, mental illness and
2 developmental disability. A judge, at his or her discretion,
3 may consider developmental immaturity as a factor.

4 (705 ILCS 405/5-5.5-105 new)

5 Sec. 5-5.5-105. Raising issue; burden; fitness motions.

6 (a) The issue of the minor's fitness for trial, to plead,
7 or to be sentenced may be raised by the defense, the State, or
8 the court at any appropriate time before a plea is entered or
9 before, during, or after trial. When a bonafide doubt of the
10 minor's fitness is raised, the court shall order a
11 determination of the issue before proceeding further.

12 (b) Upon request of the minor that a qualified expert be
13 appointed to examine him or her to determine prior to trial if
14 a bonafide doubt as to his or her fitness to stand trial may be
15 raised, the court, in its discretion, may order an appropriate
16 examination. However, no order entered under this subsection
17 shall prevent further proceedings in the case. An expert so
18 appointed shall examine the minor and make a report as provided
19 in Section 5-5.5-125. Upon the filing with the court of a
20 verified statement of services rendered, the court shall enter
21 an order on the county board to pay the expert a reasonable fee
22 stated in the order.

23 (c) When a bonafide doubt of the minor's fitness has been
24 raised, the burden of proving that the minor is fit by a
25 preponderance of the evidence and the burden of going forward

1 with the evidence are on the State. However, the court may call
2 its own witnesses and conduct its own inquiry.

3 (d) Following a finding of unfitness, the court may hear
4 and rule on any pretrial motion or motions if the minor's
5 presence is not essential to a fair determination of the
6 issues. A motion may be reheard upon a showing that evidence is
7 available which was not available, due to the minor's
8 unfitness, when the motion was first decided.

9 (705 ILCS 405/5-5.5-110 new)

10 Sec. 5-5.5-110. Right to jury. The issue of the minor's
11 fitness may be determined in the first instance by the court or
12 by a jury. The defense or the State may demand a jury or the
13 court on its own motion may order a jury. However, when the
14 issue is raised after trial has begun or after conviction but
15 before sentencing, or when the issue is to be redetermined
16 under Section 5-5.5-150 or 5-5.5-185, the issue shall be
17 determined by the court.

18 (705 ILCS 405/5-5.5-115 new)

19 Sec. 5-5.5-115. Fitness examination.

20 (a) When the issue of fitness involves the minor's mental
21 condition, the court shall order an examination of the minor by
22 one or more licensed physicians, clinical psychologists, or
23 psychiatrists chosen by the court. No physician, clinical
24 psychologist, or psychiatrist employed by the Department of

1 Human Services shall be ordered to perform, in his or her
2 official capacity, an examination under this Section. Under
3 this Act, the evaluator must have training in child development
4 as well as training or experience in forensic practice.

5 (b) If the issue of fitness involves the minor's physical
6 condition, the court shall appoint one or more physicians and
7 in addition, other experts as it may deem appropriate to
8 examine the minor and to report to the court regarding the
9 minor's condition.

10 (c) An examination ordered under this Section shall be
11 given at the place designated by the person who will conduct
12 the examination, except that if the minor is being held in
13 custody, the examination shall take place at the location as
14 the court directs. No examinations under this Section shall be
15 ordered to take place at mental health or developmental
16 disabilities facilities operated by the Department of Human
17 Services. If the minor fails to keep appointments without
18 reasonable cause or if the person conducting the examination
19 reports to the court that diagnosis requires hospitalization or
20 extended observation, the court may order the minor admitted to
21 an appropriate facility for an examination, other than a
22 screening examination, for not more than 7 days. The court may,
23 upon a showing of good cause, grant an additional 7 days to
24 complete the examination.

25 (d) A juvenile who has been released from detention prior
26 to trial shall not be placed back in detention based solely on

1 the fact that a court has ordered an evaluation.

2 (e) Upon request by the defense and if the minor is
3 indigent, the court may appoint, in addition to the expert or
4 experts chosen under subsection (a) of this Section, a
5 qualified expert selected by the minor to examine him and to
6 make a report as provided in Section 5-5.5-125. Upon the filing
7 with the court of a verified statement of services rendered,
8 the court shall enter an order on the county board to pay the
9 expert a reasonable fee stated in the order.

10 (705 ILCS 405/5-5.5-120 new)

11 Sec. 5-5.5-120. Use of statements made during examination
12 or treatment.

13 (a) Statements made by the minor and information gathered
14 in the course of any examination or treatment ordered under
15 Section 5-5.5-115, 5-5.5-135, or 5-5.5-150 shall not be
16 admissible against the minor unless he or she raises the
17 defense of insanity or the defense of drugged or intoxicated
18 condition, in which case the statements or information shall be
19 admissible only on the issue of whether he or she was insane,
20 drugged, or intoxicated. The refusal of the minor to cooperate
21 in the examinations shall not preclude the raising of those
22 defenses but shall preclude the minor from offering expert
23 evidence or testimony tending to support the defenses if the
24 expert evidence or testimony is based upon the expert's
25 examination of the minor.

1 (b) Except as provided in paragraph (a) of this Section, no
2 statement made by the minor in the course of any examination or
3 treatment ordered under Section 5-5.5-115, 5-5.5-135, or
4 5-5.150 which relates to the crime charged or to other criminal
5 acts shall be disclosed by persons conducting the examination
6 or the treatment, except to members of the examining or
7 treating team, without the informed written consent of the
8 minor, who is competent at the time of giving the consent.

9 (c) The court shall advise the minor of the limitations on
10 the use of any statements made or information gathered in the
11 course of the fitness examination or subsequent treatment as
12 provided in this Section. It shall also advise him or her that
13 he or she may refuse to cooperate with the person conducting
14 the examination, but that his or her refusal may be admissible
15 into evidence on the issue of his or her mental or physical
16 condition.

17 (705 ILCS 405/5-5.5-125 new)

18 Sec. 5-5.5-125. Report.

19 (a) The person or persons conducting an examination of the
20 minor, under paragraph (a) or (b) of Section 5-5.5-115 shall
21 submit a written report to the court, the State, and the
22 defense within 30 days of the date of the order. The report
23 shall include:

24 (1) a diagnosis and an explanation as to how it was
25 reached and the facts upon which it is based;

1 (2) the minor's history and current status regarding
2 any possible mental illness, intellectual disability, or
3 physical disability;

4 (3) a description of the cognitive abilities of the
5 minor associated with the minor's current level of
6 development;

7 (4) the minor's functional abilities related to
8 fitness, including the minor's ability to understand the
9 nature and purpose of the proceedings against him or her or
10 to assist in his or her defense;

11 (5) the relationship between the minor's diagnosis,
12 disabilities, developmental characteristics, and
13 functional abilities, identified above, and any mental
14 condition resulting in deficits to the minor's functional
15 abilities related to fitness; and

16 (6) if the evaluator believes the minor is in need of
17 remediation or restoration services, the evaluator should
18 discuss:

19 (i) whether the minor's deficits are likely to be
20 remediated or restored within the statutory period;

21 (ii) any recommended interventions to aid in the
22 remediation or restoration of the minor's fitness; and

23 (iii) whether it is more therapeutically
24 appropriate to provide the interventions on an
25 outpatient or inpatient basis.

26 (b) If the report indicates that the minor is not fit to

1 stand trial or to plead because of a disability, the report
2 shall include an opinion as to the likelihood of the minor
3 attaining fitness within one year if provided with a course of
4 treatment. If the person or persons preparing the report are
5 unable to form that opinion, the report shall state the reasons
6 for being able to form an opinion. The report may include a
7 general description of the type of treatment needed and of the
8 least physically restrictive form of treatment therapeutically
9 appropriate.

10 (c) The report shall indicate what information, if any,
11 contained in the report may be harmful to the mental condition
12 of the minor if made known to him or her.

13 (705 ILCS 405/5-5.5-130 new)

14 Sec. 5-5.5-130. Fitness hearing.

15 (a) The court shall conduct a hearing to determine the
16 minor's fitness within 14 days of receipt of the final written
17 report unless agreed upon by all parties or for good cause
18 shown; in which case the hearing shall be conducted no later
19 than 45 days of receipt of the final written report of the
20 person or persons conducting the examination or upon conclusion
21 of the matter then pending before it, subject to continuances
22 allowed under, Section 114-4 of the Code of Criminal Procedure
23 of 1963.

24 (b) Subject to the rules of evidence, matters admissible on
25 the issue of the minor's fitness include, but are not limited

1 to, the following:

2 (1) the minor's knowledge and understanding of the
3 charge, the proceedings, the consequences of a plea,
4 judgment, or sentence, and the functions of the
5 participants in the trial process;

6 (2) the minor's ability to observe, recollect, and
7 relate occurrences, especially those concerning the
8 incidents alleged, and to communicate with and assist
9 counsel;

10 (3) the minor's social behavior and abilities;
11 orientation as to time and place; recognition of persons,
12 places, and things; and performance of motor processes; and
13 strengths and weaknesses as they relate to the necessary
14 abilities to be fit; and

15 (4) the relationship between the minor's fitness
16 deficits and any mental or physical condition or
17 developmental immaturity.

18 (c) The minor has the right to be present at every hearing
19 on the issue of his or her fitness. The minor's presence may be
20 waived only if there is filed with the court a certificate
21 stating that the minor is physically unable to be present and
22 the reasons therefor. The certificate shall be signed by a
23 licensed physician who, within 7 days, has examined the minor.

24 (d) On the basis of the evidence before it, the court or
25 jury shall determine whether the minor is fit to stand trial or
26 to plead. If it finds that the minor is unfit, the court or the

1 jury shall determine whether there is substantial probability
2 that the minor, if provided with a course of treatment, will
3 attain fitness within one year. If the court or the jury finds
4 that there is not a substantial probability, the court shall
5 proceed as provided in Section 5-5.5-165. If the probability is
6 found or if the court or the jury is unable to determine
7 whether a substantial probability exists, the court shall order
8 the minor to undergo treatment for the purpose of rendering him
9 fit. In the event that a minor is ordered to undergo treatment
10 when there has been no determination as to the probability of
11 his or her attaining fitness, the court shall conduct a hearing
12 as soon as possible following the receipt of the report filed
13 under paragraph (d) of Section 5-5.5-135, unless the hearing is
14 waived by the defense, and shall make a determination as to
15 whether a substantial probability exists.

16 (e) An order finding the minor unfit is a final order for
17 purposes of appeal by the State or the minor.

18 (705 ILCS 405/5-5.5-135 new)

19 Sec. 5-5.5-135. Commitment for treatment; treatment plan.

20 (a) The court shall select the least physically restrictive
21 form of treatment therapeutically appropriate and consistent
22 with the treatment recommendations.

23 (b) When a minor's finding of unfitness is based upon
24 mental illness, developmental disability, developmental
25 immaturity, or physical limitations, the court may order the

1 minor placed under the supervision of the Department of Human
2 Services which shall place and maintain the minor in a suitable
3 treatment program or facility, or the court may order the minor
4 placed in an appropriate public or private treatment program or
5 facility which has agreed to provide treatment to the minor.
6 The placement may be ordered either on an outpatient or
7 inpatient basis, whichever is therapeutically appropriate and
8 least restrictive.

9 (c) If the minor's disability is physical, the court may
10 order the minor placed under the supervision of the Department
11 of Human Services which shall place and maintain the minor in a
12 suitable treatment facility or program, or the court may order
13 the minor placed in an appropriate public or private facility
14 or treatment program which has agreed to provide treatment to
15 the minor. The placement may be ordered either on an inpatient
16 or an outpatient basis, whichever is therapeutically
17 appropriate and least restrictive.

18 (d) The clerk of the circuit court shall transmit to the
19 Department, agency, or institution, if any, to which the minor
20 is remanded for treatment, the following:

21 (1) a certified copy of the order to undergo treatment;

22 (2) the county and municipality where the offense is
23 alleged to have been committed;

24 (3) the county and municipality in which the arrest
25 took place;

26 (4) a copy of the arrest report, criminal charges,

1 arrest record, jail record, and the report prepared under
2 Section 5-5.5-125; and

3 (5) any additional matters which the court directs the
4 clerk to transmit.

5 (e) Within 30 days of entry of an order to undergo
6 treatment, the person supervising the minor's treatment shall
7 file with the court, the State, and the defense a report
8 assessing the facility's or program's capacity to provide
9 appropriate treatment for the minor and indicating his or her
10 opinion as to the probability of the minor's attaining fitness
11 within a period of one year from the date of the finding of
12 unfitness. If the report indicates that there is a substantial
13 probability that the minor will attain fitness within the time
14 period, the treatment supervisor shall also file a treatment
15 plan which shall include:

16 (1) a diagnosis of the minor's disability;

17 (2) a description of treatment goals with respect to
18 rendering the minor fit, a specification of the proposed
19 treatment modalities, and an estimated timetable for
20 attainment of the goals; and

21 (3) an identification of the person in charge of
22 supervising the minor's treatment.

23 (705 ILCS 405/5-5.5-140 new)

24 Sec. 5-5.5-140. Progress reports.

25 (a) The treatment supervisor shall submit a written

1 progress report to the court, the State, and the defense:

2 (1) at least 7 days prior to the date for any hearing
3 on the issue of the minor's fitness;

4 (2) whenever he or she believes that the minor has
5 attained fitness; or

6 (3) whenever he or she believes that there is not a
7 substantial probability that the minor will attain
8 fitness, with treatment, within one year from the date of
9 the original finding of unfitness.

10 (b) The progress report shall contain:

11 (1) the clinical findings of the treatment supervisor
12 and the facts upon which the findings are based;

13 (2) the opinion of the treatment supervisor as to
14 whether the minor has attained fitness or as to whether the
15 minor is making progress, under treatment, toward
16 attaining fitness within one year from the date of the
17 original finding of unfitness; and

18 (3) if the minor is receiving medication, information
19 from the prescribing physician indicating the type, the
20 dosage, and the effect of the medication on the minor's
21 appearance, actions, and demeanor.

22 (705 ILCS 405/5-5.5-145 new)

23 Sec. 5-5.5-145. Records. Any report filed of record with
24 the court concerning diagnosis, treatment, or treatment plans
25 made under this Article shall not be placed in the minor's

1 court record but shall be maintained separately by the clerk of
2 the court and shall be available only to the court or an
3 appellate court, the State, the defense, a facility or program
4 which is providing treatment to the minor under an order of the
5 court, or other persons as the court may direct.

6 (705 ILCS 405/5-5.5-150 new)

7 Sec. 5-5.5-150. Ninety-day hearings; continuing treatment.

8 (a) Upon entry or continuation of any order to undergo
9 treatment, the court shall set a date for hearing to reexamine
10 the issue of the minor's fitness not more than 90 days
11 thereafter. In addition, whenever the court receives a report
12 from the supervisor of the minor's treatment under paragraph
13 (2) or (3) of subsection (a) of Section 5-5.5-140, the court
14 shall immediately set the matter for a first hearing within 14
15 days unless good cause is shown why the hearing cannot be held.
16 On the date set or upon conclusion of the matter then pending
17 before it, the court, sitting without a jury, shall conduct a
18 hearing, unless waived by the defense, and shall determine:

19 (1) whether the minor is fit to stand trial or to
20 plead; and if not,

21 (2) whether the minor is making progress under
22 treatment toward attainment of fitness within one year from
23 the date of the original finding of unfitness.

24 (b) If the court finds the minor to be fit under this
25 Section, the court shall set the matter for trial; however, if

1 the minor is in need of continued care or treatment and the
2 supervisor of the minor's treatment agrees to continue to
3 provide it, the court may enter any order it deems appropriate
4 for the continued care or treatment of the minor by the
5 facility or program pending the conclusion of the criminal
6 proceedings.

7 (c) If the court finds that the minor is still unfit but
8 that he or she is making progress toward attaining fitness, the
9 court may continue or modify its original treatment order
10 entered under Section 5-5.5-135.

11 (d) If the court finds that the minor is still unfit and
12 that he or she is not making progress toward attaining fitness
13 such that there is not a substantial probability that he or she
14 will attain fitness within one year from the date of the
15 original finding of unfitness, the court shall proceed under
16 Section 5-5.5-165. However, if the minor is in need of
17 continued care and treatment and the supervisor of the minor's
18 treatment agrees to continue to provide it, the court may enter
19 any order it deems appropriate for the continued care or
20 treatment by the facility or program pending the conclusion of
21 the criminal proceedings.

22 (705 ILCS 405/5-5.5-155 new)

23 Sec. 5-5.5-155. Medication.

24 (a) A minor who is receiving psychotropic medication shall
25 not be presumed to be unfit to stand trial solely by virtue of

1 the receipt of those drugs or medications.

2 (b) Whenever a minor who is receiving medication under
3 medical direction is transferred between a place of custody and
4 a treatment facility or program, a written report from the
5 prescribing physician shall accompany the minor. The report
6 shall state the type and dosage of the minor's medication and
7 the duration of the prescription. The chief officer of the
8 place of custody or the treatment supervisor at the facility or
9 program shall insure that the medication is provided according
10 to the directions of the prescribing physician or until
11 superseded by order of a physician who has examined the minor.

12 (c) If a minor who is deemed incompetent is in need of
13 medication, care will be taken by the treatment provider to
14 provide the medicine expected to assist in the restoration of
15 competency, whether or not that medication is on the formulary.

16 (705 ILCS 405/5-5.5-160 new)

17 Sec. 5-5.5-160. Trial with special provisions and
18 assistance.

19 (a) On motion of the minor, the State, or on the court's
20 own motion, the court shall determine whether special
21 provisions or assistance will render the minor fit to stand
22 trial as defined in Section 5-5.5-101.

23 (b) The special provisions or assistance may include but
24 are not limited to:

25 (1) Appointment of qualified translators who shall

1 simultaneously translate all testimony at trial into
2 language understood by the minor.

3 (2) Appointment of experts qualified to assist a minor
4 who because of a disability is unable to understand the
5 proceedings or communicate with his or her attorney.

6 (c) The case may proceed to trial only if the court
7 determines that the provisions or assistance compensate for a
8 minor's disabilities so as to render the minor fit as defined
9 in Section 5-5.5-101. In that case the court shall state for
10 the record the following:

11 (1) the qualifications and experience of the experts or
12 other persons appointed to provide special assistance to
13 the minor;

14 (2) the court's reasons for selecting or appointing the
15 experts or other persons to provide the special assistance
16 to the minor;

17 (3) how the appointment of the expert or other persons
18 will serve the goal of rendering the minor fit in view of
19 the appointee's qualifications and experience, taken in
20 conjunction with the particular disabilities of the minor;
21 and

22 (4) any other factors considered by the court in
23 appointing that expert or person.

24 (705 ILCS 405/5-5.5-165 new)

25 Sec. 5-5.5-165. Unfit minors. Cases involving an unfit

1 minor who demands a discharge hearing or a minor who cannot
2 become fit to stand trial and for whom no special provisions or
3 assistance can compensate for his or her disability and render
4 the minor fit shall proceed in the following manner:

5 (1) Upon a determination that there is not a substantial
6 probability that the minor will attain fitness within one year
7 from the original finding of unfitness, a minor or the attorney
8 for the minor may move for a discharge hearing under the
9 provisions of Section 5-5.5-175. The discharge hearing shall be
10 held within 120 days of the filing of a motion for a discharge
11 hearing, unless the delay is occasioned by the minor.

12 (2) If at any time the court determines that there is not a
13 substantial probability that the minor will become fit to stand
14 trial or to plead within one year from the date of the original
15 finding of unfitness, or if at the end of one year from that
16 date the court finds the minor still unfit and for whom no
17 special provisions or assistance can compensate for his or her
18 disabilities and render the minor fit, the State shall request
19 the court:

20 (A) to set the matter for hearing under Section
21 5-5.5-175 unless a hearing has already been held under
22 paragraph (1) of this Section; or

23 (B) to release the minor from custody and to dismiss
24 with prejudice the charges against the minor; or

25 (C) to remand the minor to the custody of the
26 Department of Human Services and order a hearing to be

1 conducted under the provisions of the Mental Health and
2 Developmental Disabilities Code. The Department of Human
3 Services shall have 7 days from the date it receives the
4 minor to prepare and file the necessary petition and
5 certificates that are required for commitment under the
6 Mental Health and Developmental Disabilities Code. If the
7 minor is committed to the Department of Human Services
8 under the hearing, the court having jurisdiction over the
9 criminal matter shall dismiss the charges against the
10 minor, with the leave to reinstate. In those cases the
11 Department of Human Services shall notify the court, the
12 State's Attorney, and the defense attorney upon the
13 discharge of the minor. A former minor so committed shall
14 be treated in the same manner as any other civilly
15 committed patient for all purposes including admission,
16 selection of the place of treatment and the treatment
17 modalities, entitlement to rights and privileges,
18 transfer, and discharge. A minor who is not committed shall
19 be remanded to the court having jurisdiction of the
20 criminal matter for disposition under subparagraph (A) or
21 (B) of paragraph (2) of this Section.

22 (3) If the minor is restored to fitness and the original
23 charges against the minor are reinstated, the speedy trial
24 provisions of Section 103-5 of the Code of Criminal Procedure
25 of 1963 shall commence to run.

1 (705 ILCS 405/5-5.5-170 new)

2 Sec. 5-5.5-170. Time credit. Time spent in custody under
3 orders issued under Section 5-5.5-135 or 5-5.5-150 or pursuant
4 to a commitment to the Department of Human Services following a
5 finding of unfitness or incompetency under prior law, shall be
6 credited against any sentence imposed on the minor in the
7 pending criminal case or in any other case arising out of the
8 same conduct.

9 (705 ILCS 405/5-5.5-175 new)

10 Sec. 5-5.5-175. Discharge hearing.

11 (a) As provided for in paragraph (1) of Section 5-5.5-165
12 and subparagraph (A) of paragraph (2) of Section 5-5.5-165 a
13 hearing to determine the sufficiency of the evidence shall be
14 held. The hearing shall be conducted by the court without a
15 jury. The State and the minor may introduce evidence relevant
16 to the question of minor's guilt of the crime charged. The
17 court may admit hearsay or affidavit evidence on secondary
18 matters such as testimony to establish the chain of possession
19 of physical evidence, laboratory reports, authentication of
20 transcripts taken by official reporters, court and business
21 records, and public documents.

22 (b) If the evidence does not prove the minor guilty beyond
23 a reasonable doubt, the court shall enter a judgment of
24 acquittal; however, nothing in this Article shall prevent the
25 State from requesting the court to commit the minor to the

1 Department of Human Services under the provisions of the Mental
2 Health and Developmental Disabilities Code.

3 (c) If the minor is found not guilty by reason of insanity,
4 the court shall enter a judgment of acquittal and the
5 proceedings after acquittal by reason of insanity under Section
6 5-2-4 of the Unified Code of Corrections shall apply.

7 (d) If the discharge hearing does not result in an
8 acquittal of the charge the minor may be remanded for further
9 treatment and the one year time limit set forth in Section
10 5-5.5-165 shall be extended as follows:

11 (1) if the most serious charge upon which the State
12 sustained its burden of proof was a Class 1 or Class X
13 felony, the treatment period may be extended up to a
14 maximum treatment period of 2 years; if a Class 2, 3, or 4
15 felony, the treatment period may be extended up to a
16 maximum of 15 months; or

17 (2) if the State sustained its burden of proof on a
18 charge of first degree murder, the treatment period may be
19 extended up to a maximum treatment period of 5 years.

20 (e) Transcripts of testimony taken at a discharge hearing
21 may be admitted in evidence at a subsequent trial of the minor,
22 subject to the rules of evidence, if the witness who gave the
23 testimony is legally unavailable at the time of the subsequent
24 trial.

25 (f) If the court fails to enter an order of acquittal the
26 minor may appeal from the judgment in the same manner provided

1 for an appeal from a conviction in a criminal case.

2 (g) At the expiration of an extended period of treatment
3 ordered under this Section:

4 (1) Upon a finding that the minor is fit or can be
5 rendered fit consistent with Section 5-5.5-160, the court
6 may proceed with trial.

7 (2) If the minor continues to be unfit to stand trial,
8 the court shall determine whether he or she is subject to
9 involuntary admission under the Mental Health and
10 Developmental Disabilities Code or constitutes a serious
11 threat to the public safety. If so found, the minor shall
12 be remanded to the Department of Human Services for further
13 treatment and shall be treated in the same manner as a
14 civilly committed patient for all purposes, except that the
15 original court having jurisdiction over the minor shall be
16 required to approve any conditional release or discharge of
17 the minor, for the period of commitment equal to the
18 maximum sentence to which the minor would have been subject
19 had he or she been convicted in a criminal proceeding.
20 During this period of commitment, the original court having
21 jurisdiction over the minor shall hold hearings under
22 subparagraph (A) of this paragraph (2). However, if the
23 minor is remanded to the Department of Human Services, the
24 minor shall be placed in a secure setting unless the court
25 determines that there are compelling reasons why the
26 placement is not necessary. If the minor does not have a

1 current treatment plan, then within 3 days of admission
2 under this paragraph (2), a treatment plan shall be
3 prepared for the minor and entered into his or her record.
4 The plan shall include (i) an assessment of the minor's
5 treatment needs, (ii) a description of the services
6 recommended for treatment, (iii) the goals of each type of
7 element of service, (iv) an anticipated timetable for the
8 accomplishment of the goals, and (v) a designation of the
9 qualified professional responsible for the implementation
10 of the plan. The plan shall be reviewed and updated as the
11 clinical condition warrants, but not less than every 30
12 days. Every 90 days after the initial admission under this
13 paragraph (2), the facility director shall file a typed
14 treatment plan report with the original court having
15 jurisdiction over the minor. The report shall include an
16 opinion as to whether the minor is fit to stand trial and
17 whether the minor is currently subject to involuntary
18 admission, in need of mental health services on an
19 inpatient basis, or in need of mental health services on an
20 outpatient basis. The report shall also summarize the basis
21 for those findings and provide a current summary of the 5
22 items required in a treatment plan. A copy of the report
23 shall be forwarded to the clerk of the court, the State's
24 Attorney, and the minor's attorney if the minor is
25 represented by counsel.

26 The court on its own motion may order a hearing to review

1 the treatment plan. The minor or the State's Attorney may
2 request a treatment plan review every 90 days and the court
3 shall review the current treatment plan to determine whether
4 the plan complies with the requirements of this Section. The
5 court may order an independent examination on its own
6 initiative and shall order an evaluation if either the
7 recipient or the State's Attorney so requests and has
8 demonstrated to the court that the plan cannot be effectively
9 reviewed by the court without the an examination. Under no
10 circumstances shall the court be required to order an
11 independent examination under this Section more than once each
12 year. The examination shall be conducted by a psychiatrist or
13 clinical psychologist as defined in Section 1-103 of the Mental
14 Health and Developmental Disabilities Code who is not in the
15 employ of the Department of Human Services. If, during the
16 period within which the minor is confined in a secure setting,
17 the court enters an order that requires the minor to appear,
18 the court shall timely transmit a copy of the order or writ to
19 the director of the particular Department of Human Services
20 facility where the minor resides authorizing the
21 transportation of the minor to the court for the purpose of the
22 hearing.

23 (A) 180 days after a minor is remanded to the
24 Department of Human Services, under paragraph (2), and
25 every 180 days thereafter for so long as the minor is
26 confined under the order entered thereunder, the court

1 shall set a hearing and shall direct that notice of the
2 time and place of the hearing be served upon the minor, the
3 facility director, the State's Attorney, and the minor's
4 attorney. If requested by either the State or the defense
5 or if the court determines that it is appropriate, an
6 impartial examination of the minor by a psychiatrist or
7 clinical psychologist as defined in Section 1-103 of the
8 Mental Health and Developmental Disabilities Code who is
9 not in the employ of the Department of Human Services shall
10 be ordered, and the report considered at the time of the
11 hearing. If the minor is not currently represented by
12 counsel the court shall appoint counsel to represent the
13 minor at the hearing. The court shall make a finding as to
14 whether the minor is:

15 (i) subject to involuntary admission;

16 (ii) in need of mental health services in the form
17 of inpatient care; or

18 (iii) in need of mental health services but not
19 subject to involuntary admission nor inpatient care.

20 The findings of the court shall be established by clear
21 and convincing evidence and the burden of proof and the
22 burden of going forward with the evidence shall rest
23 with the State's Attorney. Upon finding by the court,
24 the court shall enter its findings and an appropriate
25 order.

26 (B) The terms "subject to involuntary admission", "in need

1 of mental health services in the form of inpatient care" and
2 "in need of mental health services but not subject to
3 involuntary admission nor inpatient care" shall have the
4 meanings ascribed to them in paragraph (3) of subsection (d) of
5 Section 5-2-4 of the Unified Code of Corrections.

6 (3) If the minor is not committed under this Section,
7 he or she shall be released.

8 (4) In no event may the treatment period be extended to
9 exceed the maximum sentence to which a minor would have
10 been subject had he or she been convicted in a criminal
11 proceeding. For purposes of this Section, the maximum
12 sentence shall be determined by Section 5-8-1 (730 ILCS
13 5/5-8-1) or Article 4.5 of Chapter V of the Unified Code of
14 Corrections, excluding any sentence of natural life. The
15 treatment period cannot extend beyond the jurisdiction of
16 this Act.

17 (705 ILCS 405/5-5.5-180 new)

18 Sec. 5-5.5-180. Disposition of minors suffering
19 disabilities.

20 (a) A minor convicted following a trial conducted under the
21 provisions of Section 5-5.5-160 shall not be sentenced before a
22 written presentence report of investigation is presented to and
23 considered by the court. The presentence report shall be
24 prepared under Sections 5-3-2, 5-3-3, and 5-3-4 of the Unified
25 Code of Corrections and shall include a physical and mental

1 examination unless the court finds that the reports of prior
2 physical and mental examinations conducted under this Article
3 are adequate and recent enough so that additional examinations
4 would be unnecessary.

5 (b) A minor convicted following a trial under Section
6 5-5.5-160 shall not be subject to the death penalty.

7 (c) A minor convicted following a trial under Section
8 5-5.5-160 shall be sentenced according to the procedures and
9 dispositions authorized under the Unified Code of Corrections
10 subject to the following provisions:

11 (1) The court shall not impose a sentence of
12 imprisonment upon the minor if the court believes that
13 because of his or her disability a sentence of imprisonment
14 would not serve the ends of justice and the interests of
15 society and the minor or that because of his or her
16 disability a sentence of imprisonment would subject the
17 offender to excessive hardship. In addition to any other
18 conditions of a sentence of conditional discharge or
19 probation the court may require that the minor undergo
20 treatment appropriate to his or her mental or physical
21 condition.

22 (2) After imposing a sentence of imprisonment upon a
23 minor who has a mental disability, the court may remand him
24 or her to the custody of the Department of Human Services
25 and order a hearing to be conducted under the provisions of
26 the Mental Health and Developmental Disabilities Code. If

1 the minor is committed following the hearing, he or she
2 shall be treated in the same manner as any other civilly
3 committed patient for all purposes except as provided in
4 this Section. If the minor is not committed under the
5 hearing, he or she shall be remanded to the sentencing
6 court for disposition according to the sentence imposed.

7 (3) If the court imposes a sentence of imprisonment
8 upon a minor who has a mental disability but does not
9 proceed under paragraph (2) of subsection (c) of this
10 Section, it shall order the Department of Corrections to
11 proceed under Section 3-8-5 of the Unified Code of
12 Corrections.

13 (4) If the court imposes a sentence of imprisonment
14 upon a minor who has a physical disability, it may
15 authorize the Department of Corrections to place the minor
16 in a public or private facility which is able to provide
17 care or treatment for the minor's disability and which
18 agrees to do so.

19 (5) When a minor is placed with the Department of Human
20 Services or another facility under paragraph (2) or (4) of
21 this subsection (c), the Department or private facility
22 shall not discharge or allow the minor to be at large in
23 the community without prior approval of the court. If the
24 minor is placed in the custody of the Department of Human
25 Services, the minor shall be placed in a secure setting
26 unless the court determines that there are compelling

1 reasons why the placement is not necessary. The minor shall
2 accrue good time and shall be eligible for parole in the
3 same manner as if he or she were serving his or her
4 sentence within the Department of Corrections. When the
5 minor no longer requires hospitalization, care, or
6 treatment, the Department of Human Services or the facility
7 shall transfer him or her, if his or her sentence has not
8 expired, to the Department of Corrections. If a minor is
9 transferred to the Department of Corrections, the
10 Department of Human Services shall transfer to the
11 Department of Corrections all related records pertaining
12 to length of custody and treatment services provided during
13 the time the minor was held.

14 (6) The Department of Corrections shall notify the
15 Department of Human Services or a facility in which a minor
16 has been placed under paragraph (2) or (4) of subsection
17 (c) of this Section of the expiration of his or her
18 sentence. Thereafter, a minor in the Department of Human
19 Services shall continue to be treated under his commitment
20 order and shall be considered a civilly committed patient
21 for all purposes including discharge. A minor who is in a
22 facility under paragraph (4) of subsection (c) of this
23 Section shall be informed by the facility of the expiration
24 of his or her sentence, and shall either consent to the
25 continuation of his or her care or treatment by the
26 facility or shall be discharged.

1 (705 ILCS 405/5-5.5-185 new)

2 Sec. 5-5.5-185. Minors found unfit prior to the effective
3 date of this Article; reports; appointment of counsel.

4 (a) Within 180 days after the effective date of this
5 Article, the Department of Human Services shall compile a
6 report on each minor under its custody who was found unfit or
7 incompetent to stand trial or to be sentenced prior to the
8 effective date of this Article. Each report shall include the
9 minor's name, indictment and warrant numbers, the county of his
10 or her commitment, the length of time he or she has been
11 hospitalized, the date of his or her last fitness hearing, and
12 a report on his or her present status as provided in Section
13 5-5.5-140.

14 (b) The reports shall be forwarded to the Supreme Court
15 which shall distribute copies thereof to the chief judge of the
16 court in which the criminal charges were originally filed, to
17 the State's Attorney and the public defender of the same
18 county, and to the minor's attorney of record, if any. Notice
19 that the report has been delivered shall be given to the minor.

20 (c) Upon receipt of the report, the chief judge shall
21 appoint the public defender or other counsel for each minor who
22 is not represented by counsel and who is indigent under Section
23 113-3 of the Code of Criminal Procedure of 1963. The court
24 shall provide the minor's counsel with a copy of the report.

1 (705 ILCS 405/5-5.5-190 new)

2 Sec. 5-5.5-190. Disposition of minors found unfit prior to
3 the effective date of this Article.

4 (a) Upon reviewing the report, the court shall determine
5 whether the minor has been in the custody of the Department of
6 Human Services for a period of time equal to the length of time
7 that the minor would have been required to serve, less good
8 time, before becoming eligible for parole or mandatory
9 supervised release had he or she been convicted of the most
10 serious offense charged and had he or she received the maximum
11 sentence therefor. If the court so finds, it shall dismiss the
12 charges against the minor, with leave to reinstate. If the
13 minor has not been committed under the Mental Health and
14 Developmental Disabilities Code, the court shall order him or
15 her discharged or shall order a hearing to be conducted
16 immediately under the provisions of the Code. If the minor was
17 committed under the Code, he or she shall continue to be
18 treated under his or her commitment order and shall be
19 considered a civilly committed patient for all purposes
20 including discharge.

21 (b) If the court finds that a minor has been in the custody
22 of the Department of Human Services for a period less than that
23 specified in paragraph (a) of this Section, the court shall
24 conduct a hearing under Section 5-5.5-150 immediately to
25 redetermine the issue of the minor's fitness to stand trial or
26 to plead. If the minor is fit, the matter shall be set for

1 trial. If the court finds that the minor is unfit, it shall
2 proceed under Section 5-5.5-150 or 5-5.5-165; however, a minor
3 who is still unfit and who has been in the custody of the
4 Department of Human Services for a period of more than one year
5 from the date of the finding of unfitness shall be immediately
6 subject to the provisions of Section 5-5.5-165.

7 (705 ILCS 405/5-5.5-195 new)

8 Sec. 5-5.5-195. Conflict. In the event of any conflict
9 between this Article and the Mental Health and Developmental
10 Disabilities Code, the provisions of this Article shall govern.

11 (705 ILCS 405/5-5.5-200 new)

12 Sec. 5-5.5-200. Notice to law enforcement agencies
13 regarding release of minors.

14 (a) Prior to the release by the Department of Human
15 Services of any person admitted under any provision of this
16 Article, the Department of Human Services shall give written
17 notice to the sheriff of the county where the minor was
18 admitted. In cases where the arrest of the minor or the
19 commission of the offense took place in any municipality with a
20 population of more than 25,000, the Department of Human
21 Services shall also give written notice to the proper law
22 enforcement agency for the municipality, provided the
23 municipality has requested the notice in writing.

24 (b) Where a minor in the custody of the Department of Human

1 Services under any provision of this Article is released under
2 an order of court, the clerk of the circuit court shall, after
3 the entry of the order, transmit a certified copy of the order
4 of release to the Department of Human Services and the Sheriff
5 of the county where the minor was admitted. In cases where the
6 arrest of the minor or the commission of the offense took place
7 in any municipality with a population of more than 25,000, the
8 clerk of the circuit court shall also send a certified copy of
9 the order of release to the proper law enforcement agency for
10 the municipality provided the municipality has requested the
11 notice in writing.

12 (705 ILCS 405/5-5.5-205 new)

13 Sec. 5-5.5-205. Security and transportation. No minor
14 placed in a setting of the Department of Human Services under
15 the provisions of Sections 5-5.5-135, 5-5.5-175, or 5-5.5-180
16 shall be permitted outside the facility's housing unit unless
17 escorted or accompanied by personnel of the Department of Human
18 Services or authorized by court order. Any minor placed in a
19 secure setting under this Section, transported to court
20 hearings or other necessary appointments off facility grounds
21 by personnel of the Department of Human Services, may be placed
22 in security devices or otherwise secured during the period of
23 transportation to assure secure transport of the minor and the
24 safety of Department of Human Services personnel and others.
25 These security measures shall not constitute restraint as

1 defined in the Mental Health and Developmental Disabilities
2 Code. Nor shall any minor be permitted any off-grounds
3 privileges, either with or without escort by personnel of the
4 Department of Human Services, any unsupervised on-ground
5 privileges, or placement in a non-secure setting unless the
6 off-grounds or unsupervised on-grounds privileges, or
7 placement in a non-secure setting have been approved by
8 specific court order, which order may include the conditions on
9 the minor as the court may deem appropriate and necessary to
10 reasonably assure the minor's satisfactory progress in
11 treatment and the safety of the minor or others. Whenever the
12 court receives a report from the supervisor of the minor's
13 treatment recommending the minor for any off-grounds or
14 unsupervised on-grounds privileges, or placement in a
15 non-secure setting, the court shall set the matter for a first
16 hearing within 21 days unless good cause is shown why the
17 hearing cannot be held. The changes made to this Section by
18 this amendatory Act of the 98th General Assembly are
19 declarative of existing law and shall not be construed as a new
20 enactment."